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Jakari Griffith

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Criminal History and Employment: Why we need to Ban the Box!

Jakari Griffith

After presenting a paper on the relationship between criminal records and employment at an academic conference in 2015, a session attendee came to me and shared that he had once been arrested for a marijuana charge. Although he was an exceptionally bright young man and graduated from a prestigious law school, he was unable to gain employment due to having a criminal record.

Another attendee also shared that he scored a 740 out of 800 on the Graduate Management Admissions Test (GMAT), but had been passed over by several top-ranking MBA programs because of a criminal altercation he had while intoxicated. Because many elite business schools ask about criminal convictions, and in some instances adjudications withheld, he was unable to escape the burden of his criminal past.

In the United States, it is common to hear of these stories. That is because America's prison and jail populations have increased from 300,000 people in 1970 to 2.2 million in 2012. A 2015 article featured in *The Atlantic* claims that the United States "now accounts

for less than 5 percent of the world's population...but 25 percent of its incarcerated inhabitants." To make matters worse, incarceration rates have continued to increase even as rates for violent crime have decreased, an effect largely attributed to changes in drug policy and sentencing guidelines. Of the 14 million arrests recorded by the Department of Justice in 2009, for example, less than four percent related to violent crimes.

The rise of this carceral state does not come without severe economic and social consequences. Imprisonment often means loss of a household wage earner, a predicament sending families into near immediate poverty. It means diverting taxpayers' money to federal,

state, and municipal correctional budgets. And it also means the loss of professional licensures, significant gaps in employment history, and skills atrophy for the offender. Consequently, there is an even larger penalty to be faced long after the original offense has been committed. That penalty manifests as the failure to find employment (or attend college).

Recent analysis by the Society of Human Resources (SHRM), the non-profit devoted to investigation of employment practices, found that approximately 69 percent of organizations solicit criminal history information from job applicants. This trend is troublesome to some observers who believe that criminal records information is overused, causing many firms to overlook good candidates. Moreover, the inability to find employment is a significant contributor to recidivism. So, is there an alternative that balances the rights of the applicant against the concerns for the employer?

Yes: An increasing number of states and cities are adopting Ban the Box (BTB) policy, which asks employers to delay or refrain from making inquiries into an applicant's criminal history. In 2000, just one state, Hawaii, adopted this legislation; by 2016, it has climbed to 24 states and 150 cities and counties. This policy not only adds integrity to the employment screening process, by compelling employers to focus on candidate skills and qualifications first, but it sets out guidelines that inform when criminal information should be considered during the selection process, if such information is considered at all. Yet, the program is no panacea. Compliance with BTB is hard to verify and the degree to which it helps ex-offenders is largely unknown. In one of the only published articles on the topic, featured in the University of Michigan Law & Econ Research, an examination of 15,000 fictitious online job applications submitted to employers in New York City and New Jersey found a



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disturbing pattern of discrimination in the number of interview callback rates. Specifically, applicants without criminal records received 61 percent more callbacks than applicants with criminal records. The employment landscape for ex-offenders appears rather grim.

However, there are good reasons to be hopeful. Following the Baltimore riots in 2015, *The Washington Post* notes that Johns Hopkins Hospital made a concerted effort to hire 174 people with criminal backgrounds, referring to it

as “a strategic business decision to not overlook the best talent—even if that means hiring someone who needs a second chance.” Moreover, Hopkins’ hiring efforts have achieved fairly impressive results. Of the approximately 500 ex-offenders it hired over the past five years, all have shown higher retention rates than non-offenders for their first 40 months of employment. This represents a tremendous business opportunity, considering hospital staff turnover rates hovered around 17.1 percent nationally in 2015.

In short: Johns Hopkins Hospital has demonstrated to the business community that it is possible (and even profitable) to engage ex-offenders as important human capital assets. If BTB policy had been available to the two conference attendees, they might not have gone without employment for so long. Both men have gained meaningful employment (one was even admitted to a top MBA graduate program), but only after relocating to two different Ban the Box states. And to think, there are thousands of people across the United States living without access to any BTB protections. For their sake, we must continue the push for BTB nationally, so that Ban the Box means second chances for all!

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Jakari Griffith is Assistant Professor in the Department of Management.